IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 8 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH TAX

Versus

VINUBHAI H PANCHAL(HUF)

Appearance:

MR BB NAIK, Sr. Standing Counsel for applicant.

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE K.A.PUJ

Date of decision: 26/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

This is a Reference at the instance of the Revenue. The assessment year is 1976-77.

2. The assessee HUF on partial partition of bigger HUF of Poonjabhai Vanmalidas received properties, namely Laxmi Talkies and L.N. Talkies and disclosed the value of the said property as per valuer's report. The WTO did not accept the valuation as disclosed by the assessee and made certain adjustments. On examination of the case records, the CWT found that the value of the properties which was received on partial partition was Rs. 16,32,800/= and Rs. 19,23,800/= for A.Ys. 1968-69 to 1970-71 respectively. In view of the appreciation of value and real estate during the period 1967 to 1974 there was no justification on the part of the WTO to accept the valuation as disclosed by the assessee which was on the face of it on a much lower side. He further noticed that the WTO had made a reference to the District Valuation Officer for valuation of these properties but without waiting for the report of the valuation officer, the WTO had proceeded to accept the valuation as disclosed by the assessee. He therefore found that the value adopted by the WTO was grossly under estimated which had resulted in an order which was not only erroneous but prejudicial to the interest of revenue. He therefore quashed the said order with a direction to make fresh assessment in accordance with law and in conformity with the report of the District Valuation Officer.

3. The aforesaid order passed by the Commissioner of Wealth Tax came to be challenged by the assessee in appeal before the Income Tax Appellate Tribunal. The Tribunal set aside the order of the Commissioner and held that the order of the Wealth Tax Officer adopting the valuation given by the assessee but amended by the WTO by taking into account the renovation expenses for the properties in question cannot be considered to be prejudicial to the interest of Revenue so as to justify the exercise of powers under Section 25(2)of the Wealth Tax Act, 1957.

4. In view of the above, at the instance of the Revenue, the following four questions have been referred for our opinion :

1. "Whether on the facts and in the circumstances of the case, the Tribunal has been right in law in holding that the CWT was not justified in exercising the power u/s. 25(2) of the W.T. Act, 1957 in so far as assessment year 1976-77 in

question is concerned ?"

2. "Whether the conclusion of the Tribunal that when the WTO had made enquiries on his own and had determined the fair market value of the properties in question the Commissioner could not exercise jurisdiction u/s. 25(2) of the W.T. Act, 1957 in the instant case is correct in law and sustainable from the material on record ?"

3. "Whether the findings of the Tribunal that on account of the challenge of the valuation in the case of bigger HUF no reliance can be placed on the said valuation and prima facie it could not be said that the valuation as adopted by the WTO was prejudicial to the interest of the revenue is correct in law ?"

4. "Whether the Tribunal has not erred in law and on facts in setting aside the order of the Commissioner of Wealth-tax passed in exercise of his powers u/s. 25(2) of the W.T.Act, 1957 for the A.Y. 1976-77 in question ?"

Although the four different questions are framed, in our view, the controversy involved is in a very narrow compass and the question No.1 itself covers the controversy.

5. We have heard Mr. B.B. Naik, learned counsel for the applicant Revenue. Though served, none appears for the respondent-assessee. Mr. Naik for the Revenue has vehemently submitted that the judgment and order dated 25th November 1983 giving rise to the present Reference was a common judgment for the assessee's appeals for the assessment years 1975-76 and 1976-77, being Wealth Tax Appeals No. 453 and 692/Ahd/82 respectively. As for as the assessment year 1975-76 is concerned, the Tribunal dismissed the appeal of the assessee in respect of the same properties by holding that the Commissioner was justified in directing the Wealth Tax Officer to take into account the Valuation Reports of the District Valuation Officer and that the assessment order passed by the Wealth Tax Officer on the basis of the Valuation Report submitted by the assessee was prejudicial to the interest of the Revenue and therefore the exercise of powers by the Commissioner under Section 25(2) of the Act was justified. Mr. Naik submitted that the WTO adopted the same base for the assessment year 1976-77, but merely added the renovation

expenses and after capitalising the same, determined the value of the properties in question. Still however, the Tribunal has held that the order of the WTO for the assessment year 1976-77 was not prejudicial to the interest of the Revenue. Mr. Naik has vehemently submitted that the Tribunal has substantially erred in law in not considering that when the very basis of the valuation of the same properties in question was found to be prejudicial to the interest of the Revenue for the assessment year 1975-76, mere capitalisation of the renovation charges and addition of the same to the base value of the properties in question does not mean that the value of the properties in question was correctly determined for the assessment year 1976-77.

6. We find considerable substance in the submissions made by Mr. Naik for the Revenue, since the Tribunal has given the following finding in respect of the assessment year 1975-76 :

> "This action of the WTO therefore viz. to accept the valuation based on an old report without putting it to proper scrutiny has resulted in an error causing prejudice to the interest of the revenue. The Commissioner was therefore fully justified in our opinion invoking his revisional powers. The learned Commissioner in our opinion could be said to have come to a valid conclusion that there was prima facie under assessment of the properties when the WTO accepted the valuation as disclosed by the assessee without any scrutiny. We accordingly uphold the decision of the CWT to revise the assessment for A.Y. 1975-76."

Having held so, it was surprising that for the assessment year 1976-77, the Tribunal did not find anything wrong with the WTO accepting the valuation of the properties as per the Valuation Report submitted by the assessee as the base value and thereafter adding the capitalisation of the renovation charges for the assessment year 1976-77. The Tribunal has given the following reasons for holding the Commissioner's order under Section 25(2) of the Act to be illegal :

> "Now we come to the appeal relating to A.Y. 1976-77. The facts which we have set out earlier clearly show that unlike A.Y. 1975-76 the WTO had determined the fair market value of the two

> properties in question on his own by capitalising the renovation charges which were incurred by the assessee and by holding that the renovation expenses would go to increase the value of the properties in question. Thus for A.Y. 1976-77 though the WTO had made the reference to the DVO and his report was awaited the WTO did apply his mind to the valuation as disclosed by the assessee and had made certain adjustments and additions in order to determine the fair market value of the two properties."

The Tribunal, thus, clearly overlooked the fact that the so-called fresh or independent determination made by the WTO for the assessment year 1976-77 was limited only to the renovation of the buildings in question and that it did not extend to fresh or independent determination of the base-value of the properties in question on the date of commencement of the previous year relevant to the assessment year 1976-77 and that very base value was found to be prejudicial for the assessment year 1975-76. Obviously it was the adoption of the same value for the assessment year 1976-77 as base-value. This caused prejudice to the interest of the Revenue and therefore the Tribunal clearly erred in interfering with the order of the Commissioner of Wealth-Tax for the assessment year 1976-77 when it found no fault with the Commissioner's order under Section 25(2) for the same properties in question for the assessment year 1975-76.

7. In view of the above discussion, our answer to the questions referred to us is in the negative, that is in favour of the Revenue and against the assessee. The Reference accordingly stands disposed of.

[M.S. Shah, J.]

rmr. [K.A. Puj, J.]